

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

NICHOLAS NEAL.

Case No. 3:22-cv-00349-MMD-CLB

v

Plaintiff,

ORDER

NEVADA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

12 Pro se Plaintiff Nicholas Neal, who was formerly an inmate in the custody of the
13 Nevada Department of Corrections, brought this civil-rights action under 42 U.S.C. § 1983
14 to redress constitutional violations that allegedly occurred at Northern Nevada
15 Correctional Center. (ECF No. 1-1.) On October 17, 2022, this Court ordered Neal to
16 update his address and file a non-prisoner application to proceed *in forma pauperis* by
17 November 16, 2022. (ECF No. 5.) That deadline expired without an updated address or
18 a non-prisoner application to proceed *in forma pauperis* from Neal, and his mail from this
19 Court is being returned as undeliverable. (ECF No. 6.)

20 | I. DISCUSSION

District courts have the inherent power to control their dockets, and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss

1 an action on one of these grounds, the Court must consider: (1) the public's interest in
 2 expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk
 3 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
 4 merits; and (5) the availability of less drastic alternatives. See *In re Phenylpropanolamine*
 5 *Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal*
 6 *Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

7 The first two factors, the public's interest in expeditiously resolving this litigation
 8 and the Court's interest in managing its docket, weigh in favor of dismissal of Neal's
 9 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
 10 because a presumption of injury arises from the occurrence of unreasonable delay in filing
 11 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
 12 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
 13 cases on their merits—is greatly outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can
 15 be used to correct the party's failure that brought about the Court's need to consider
 16 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
 17 that considering less drastic alternatives *before* the party has disobeyed a court order
 18 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
 19 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
 20 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s
 21 order as satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled
 22 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
 23 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
 24 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
 25 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed without
 26 the ability for the Court and the defendants to send Neal case-related documents, filings,
 27 and orders, the only alternative is to enter a second order setting another deadline. But
 28 without an updated address, the likelihood that the second order would even reach Neal

1 is low, so issuing a second order will only delay the inevitable and further squander the
2 Court's finite resources. Setting another deadline is not a meaningful alternative given
3 these circumstances. So the fifth factor favors dismissal.

4 **II. CONCLUSION**

5 Having thoroughly considered these dismissal factors, the Court finds that they
6 weigh in favor of dismissal. It is therefore ordered that this action is dismissed without
7 prejudice based on Neal's failure to file an updated address or a non-prisoner application
8 to proceed *in forma pauperis* in compliance with this Court's October 17, 2022 order. The
9 Clerk of Court is directed to enter judgment accordingly and close this case. No other
10 documents may be filed in this now-closed case. If Neal wishes to pursue his claims, he
11 must file a complaint in a new case and provide the Court with his current address.

12 DATED THIS 21st Day of November 2022.



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14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
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